IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3892 OF 2005

Ahsanullah abdul Munir Choudhary ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Vaibhav G. Bagade for the Applicant
Mr.R.Y.Mirza,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 29,2005.

P.C.:

1. Heard Counsel appearing for the parties. An offence has been registered against the Applicant and co-accused under Section 302 read with Section 34 of the Indian Penal Code. The allegation made in the F.I.R. filed by the son of the deceased is that on 21st December 2004 at 9.00 p.m. he was informed that his father was being assaulted by fist blows and kicks by some persons. He immediately rushed to the spot and took his father in an autorickshaw to admit him in a hospital. While he was on way the froth started coming out of the mouth of his father. Hence the complainant again came back and put his father on a platform in front of a shop of a relative and went to Bhandup Police Station for lodging complaint. The father of the complainant was then taken to Mulund General Hospital where he was declared dead.

2. The learned Advocate for the Applicant has invited my attention to various overwriting in the F.I.R. and other

documents which are placed on record under Section 173 of Code of Criminal Procedure, 1973. He pointed out that identification parade has been belatedly held. He submitted that there were serious flaws in the prosecution version.

3. The learned A.P.P. has brought to my notice the statements made by the Eye Witnesses and he submitted that no case is made out for grant of bail.

4. It is to be noted here that in the F.I.R. it is stated that accused are the sons of cousin of the deceased and there was a dispute between the accused and the deceased as regards ancestral property. The Applicant was arrested on 24th December 2004 and test identification parade was held on 26th February 2005. There are alleged Eye Witnesses by the name Uday and Sunil. In the test identification parade Uday could not identify the Applicant. However, Sunil identified the Applicant. Prima facie, there is a gross delay in holding test identification parade. The alleged incident is of 21st December 2004 which occured in the night in open space between 9.00 to 9.30 p.m. and it is very difficult to believe that one of the Eye Witnesses identified the Applicant after lapse of two months.

5. In the F.I.R. there is overwriting while mentioning the date on which the information was received by Police Station and there is also an overwriting in the column of the time

when information was received by the police. The time of inquest Panchnama is at 1.05 a.m. on 22nd December 2004 whereas the F.I.R. discloses that it was registered on 22nd December 2004 at 00.35 a.m. On the top of the inquest Panchnama the date mentioned is 21st December 2004. In three other documents initially C.R.No.283 of 2004 is mentioned and subsequently is struck out and replaced by ADR No.159 of 2004. Admittedly, there was a property dispute between the family of the accused and the family of the deceased. The Applicant is in custody for last about six months.

6. Prima facie these are factors which make the prosecution case doubtful. Therefore, the Applicant deserves to be enlarged on bail. These factors are not considered by the learned Additional Sessions Judge. It appears that he was impressed by the fact that the Applicant is a resident of Bhiwandi and he came to Bhandup where the business place of deceased is located.

7. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No.253 of 2004 of Bhandup Police Station, subject to furnishing a personal bond of Rs.15,000/- (Rupees fifteen thousand only) with one or two sureties in the like amount.

ii) The Bail is granted subject to condition that the

Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iii) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

iv) It is made clear that the observations made herein shall not be construed as any expression of opinion on merits of the trial.

v) Application is disposed of in above terms.

. The parties to act upon an authenticated copy of this order.

JUDGE